

EXHIBIT 5

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

2 *In re Google Play Consumer Antitrust
3 Litigation*

CASE NO. 3:20-CV-05761 JD

4 *Related Actions:*

5 *Epic Games, Inc. v. Google, LLC; 3:20-CV-
05671-JD*

**[PROPOSED] ORDER GRANTING
MOTION TO APPOINT INTERIM CLASS
COUNSEL**

6 *In re Google Play Developer Antitrust
Litigation, 3:20-CV-5792-JD*

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8 In this consolidated antitrust class action brought on behalf of consumer plaintiffs
9 (“Consumer Class”), the Court has reviewed Plaintiffs’ Motion to Appoint Interim Class Counsel.
10 Pursuant to Federal Rule of Civil Procedure 23(g)(3), the Court appoints Korein Tillery LLC and
11 Bartlit Beck LLP as co-lead Interim Class Counsel for the Consumer Class. Interim Class Counsel
12 meet the requirements for appointment of class counsel in Federal Rule of Civil Procedure
13 23(g)(1) because they have performed substantial work on behalf of the putative Consumer Class,
14 facilitated the consolidation of separate actions on behalf of the Consumer Class, and possess the
15 knowledge, experience, and resources necessary to effectively represent the Consumer Class.

16 The Court also appoints the firm of Milberg Phillips Grossman LLP, by and through its
17 attorney Peggy Wedgworth, as Discovery Liaison for the Consumer Class, and the firm of Pritzker
18 Levine, by and through its attorney Elizabeth Pritzker, as Liaison Counsel to further facilitate the
19 efficient and effective representation of the Consumer Class.

20 **AUTHORITY AND RESPONSIBILITIES**

21 1. Interim Class Counsel have complete authority to conduct all pretrial and trial
22 work, including settlement discussions; provided, however, that no co-lead firm from among the
23 those appointed shall initiate or engage in settlement discussions without the other co-leads’
24 consent. For the sake of illustration (and not limitation), Interim Class Counsel have the final word
25 on and responsibility for all common discovery issues, service of pleadings and filings,
26 stipulations, briefs and arguments, court hearings and appearances, communications with opposing
27 counsel and the Court, expert retention and reports, trial and appeals arising in the course of
28

1 litigation before this Court (*e.g.*, class certification decisions), as well as work assignments, billing
2 records and fee issues, and overall case strategy, scheduling, and management for the putative
3 developer class. Opposing counsel may rely on the conduct and representations of Interim Class
4 Counsel for any issue in the litigation.

5 2. Interim Class Counsel also have complete authority over, and responsibility for: (1)
6 assigning work to other plaintiffs' counsel, as may be appropriate and in the putative class's best
7 interest; (2) implementing time and expense record keeping policies; (3) collecting time and
8 expense reports from all plaintiffs' counsel on a monthly basis; (4) acting as the treasurer for any
9 litigation fund assessments and expenses; and (5) otherwise ensuring that plaintiffs' counsel not
10 perform common benefit work, bill for unnecessary read and review time, or attend hearings,
11 depositions, or other events without Interim Class Counsel's authorization.

FEES, COSTS, AND EXPENSES

13 3. Interim Class Counsel are expected to be vigilant in ensuring the efficient and
14 economical prosecution of this matter. A request for an award of fees and costs may be based only
15 on records that were prepared as the fees and costs were incurred. A prolonged forensic
16 accounting exercise or a mini-trial on fees and costs are to be avoided. To that end, Interim Class
17 Counsel will ensure that the following practices are adhered to by all counsel who perform work
18 on behalf of the putative class:

19 a. At the close of each calendar month, Interim Class Counsel will make sure
20 that all time has been entered by all timekeepers in final form. By 14 days after each month's end,
21 Interim Class Counsel will ensure that a bill for the prior month is finalized, reflecting lead
22 counsel's review of the billing records and any write-downs or write-offs by Interim Co-Lead
23 Class Counsel for inefficiencies, duplication of effort, misjudgments in staffing, and the like.
24 These final bills for each month will be segregated and kept by Interim Class Counsel, and may
25 not be altered. Only these records, prepared contemporaneously with the expenditures, may be
26 used for a fees and costs motion.

27 b. Time will be recorded in one-tenths of an hour.

1 c. Block-billing time records are not permitted. Timekeepers must itemize the
2 time expended on specific tasks in sufficient detail to ascertain whether the amount of time spent
3 performing those tasks was reasonable.

4 d. Interim Class Counsel are free to make staffing decisions as they deem
5 appropriate, but the Court will not permit fees to be recovered for multiple attorneys performing
6 duplicative work. For example, barring an unusual circumstance, no more than two lawyers should
7 bill for attendance at most fact depositions. The Court will not permit the recovery of fees for
8 every attorney from every firm to review each discovery request and response, motion, letter, e-
9 mail, etc. in the case. While each attorney should stay informed about the litigation, only the
10 attorneys designated by Interim Class Counsel to review or summarize pleadings, orders and
11 communications are working for the common benefit of the putative class, and only their time will
12 be considered for possible payment at the conclusion of this case.

13 e. Domestic air travel of less than six hours should be billed at coach class
14 rates regardless of the class flown. Travel exceeding six hours of flight time may be booked in
15 business class. In all cases, flights should be booked at the lowest available fare.

16 f. When overnight travel is necessary, counsel should be mindful in selecting
17 reasonable hotel accommodations and restaurants. Per diem expenses for travel days should not
18 exceed \$125 per person exclusive of lodging and transportation.

19 g. Failure to adhere to these guidelines – or the spirit animating them – will
20 result in the exclusion of consideration for the relevant fee or cost request.

21
22 IT IS SO ORDERED.

23 Dated: _____

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25 Hon. James Donato
26 United States District Judge
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